

REMARKS

Summary of Office Action

As an initial matter, Applicants note with appreciation that the Examiner has withdrawn all objections and rejections which are set forth in the previous Office Action.

Claims 41-71 are rejected under 35 U.S.C. § 102(b) as allegedly anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as allegedly obvious over Dubowoj, DE 19937813 (hereafter “DUBOWOJ”).

Response to Office Action

Reconsideration and withdrawal of the rejection of record are respectfully requested, in view of the following remarks.

Claims 41-71, i.e., all claims under consideration, are rejected under 35 U.S.C. § 102(b) as allegedly anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as allegedly obvious over DUBOWOJ. The rejection alleges that DUBOWOJ discloses an aqueous hair washing composition that is gel-forming and transparent and contains 2-50% by weight of surfactants, 0.25-10% by weight of an acrylate terpolymer and adjunct ingredients, such as visible particles. The rejection relies specifically on Example 1 of DUBOWOJ which sets forth a composition that comprises several surfactants and has a pH of 6. The rejection concedes that DUBOWOJ is silent with respect to transmission value, yield point and tan delta of their composition but asserts that the compositions of DUBOWOJ would inherently have the corresponding properties.

Applicants respectfully traverse this rejection. In particular, it is pointed out that all of the present independent claims 41, 53 and 65 recite, *inter alia*, that the claimed cosmetic or dermatological cleansing preparation comprises component (c), i.e., one or more gel-forming acrylate thickeners selected from cross-linked, alkali-swellable acrylate copolymers. For example, dependent claim 45 recites that component (c) comprises a copolymer of (i) one or more acrylate monomers, (ii) one or more α,β -ethylenically unsaturated monomers and (iii) one or more polyunsaturated monomers suitable for partial cross-linking. The Examiner's attention is further directed to particularly paragraphs [0024]-[0026] of the present specification.

Applicants are unable to see that DUBOWOJ teaches or suggests the use of a gel-forming cross-linked, alkali-swellable acrylate copolymer in the shampoo compositions disclosed therein. The only acrylate copolymer which is a required component in the compositions of DUBOWOJ appears to be a lower alkylacrylate/di(m)ethylaminoethyl (meth)acrylate/alkylpolyethylene glycol itaconate terpolymer (see, e.g., title of DUBOWOJ).

For example, the corresponding terpolymers which are employed in the compositions which are set forth in the Examples of DUBOWOJ are an ethylacrylate/diethylaminoethylmethacrylate/C₁₀₋₂₀-alkyl-PEG-20 itaconate terpolymer, an ethylacrylate/diethylaminoethylmethacrylate/lauryl-PEG-15 itaconate terpolymer, an ethylacrylate/diethylaminoethylmethacrylate/C₁₂₋₂₄-alkyl-PEG-15 itaconate terpolymer, an ethylacrylate/diethylaminoethylmethacrylate/C₁₀₋₁₈-alkyl-PEG-20 itaconate terpolymer, and an ethylacrylate/diethylaminoethylmethacrylate/C₁₂₋₂₄-alkyl-PEG-20 itaconate terpolymer.

It is not seen that any of these terpolymers is cross-linked and/or alkali-swellaable. Regarding the cross-linking, it is not seen that these terpolymers contain a monomer which can give rise to cross-linking, such as, e.g., a polyunsaturated monomer.

Regarding the alkali-swellaability, it is noted that the terpolymers of DUBOWOJ are used in exemplified compositions which have a pH of as low as 5.5, i.e., in the acidic range, which fact alone is an indication that these terpolymers are not alkali-swellaable (otherwise they would probably be employed at a higher pH).

At any rate, it is not even known whether the terpolymers of DUBOWOJ can form gels (act as thickener) at all. For example, the paragraph after the composition of Example 1 at page 6, lines 26-31 of DUBOWOJ states:

This shampoo was compared to a shampoo which did not contain a terpolymer.

The shampoo according to the present invention showed a significantly better foaming behavior with respect to foam volume, "creaminess" of the foam and uniformity of the foam.

In a half-side double blind experiment with 10 subjects a significantly improved wet and dry combability, a soft feel and volume as well as increased gloss were observed.

The shampoo exhibited a stable viscosity during storage for three months at 40°C.

The above passage appears to indicate that (in contrast to the foaming behavior) the viscosity of the shampoo composition is not (significantly) affected by the absence of the terpolymer.

Applicants further note that regarding the compositions disclosed therein, i.e., compositions which comprise (a) 2.5 to 50 % by weight of at least one polyethyleneglycol(3-10)-C₈-C₁₈- alkylcitrate sulfosuccinate and/or water-soluble salts thereof and (b) 0.25 to 10% by weight of a C₁-C₄ alkyl acrylate/dimethyl- or

diethylaminoethyl (meth)acrylate/C₁₀-C₃₀ alkyl polyethyleneglycol-10-30 itaconate terpolymer, DUBOWOJ states at page 2, lines 22-27:

A further advantage of these compositions is the self-thickening effectiveness of these mixtures, i.e., it is not necessary to add additional inorganic or organic thickeners to achieve the viscosity range of about 1,000 to 60,000 mPa.s at 25°C, measured with a Brookfield viscosimeter, which is particularly preferred for shampoos.

The presence of such thickeners can cause stability problems because they can interfere with the other components. This is not the case with the shampoos based on the compositions according to the present invention.

Also the above passage does not attribute any self-thickening properties to the terpolymer as such, but only to the mixture of components (a) and (b). This is in conformity with paragraph [0042] of the present specification where terpolymers of the type taught by DUBOWOJ are mentioned as examples of anionic surfactants, i.e., not as thickeners or gel-formers.

Moreover, the fact that in the above passage DUBOWOJ warns that inorganic and organic thickeners may interfere with the other components of the composition disclosed therein, is a disincentive rather than a motivation for one of ordinary skill in the art to add any inorganic or organic thickeners to the compositions of DUBOWOJ.

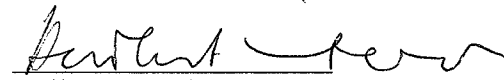
Applicants submit that for at least all of the foregoing reasons, DUBOWOJ is unable to anticipate or render obvious the subject matter of any of the claims of record, wherefore Applicants refrain from commenting on any of the other allegations which are set forth in the present Office Action without admitting however, that any of these allegations is meritorious.

To sum up, the rejection of claims 41-71 under 35 U.S.C. § 102(b)/§ 103(a) over DUBOWOJ clearly is without merit, wherefore withdrawal thereof is warranted and respectfully requested.

CONCLUSION

It is earnestly believed that all of the claims in this application are in condition for allowance, wherefore an early issuance of the Notices of Allowability and Allowance is respectfully solicited. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
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